

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DAY, #446361,

Plaintiff,

v.

RANDY O. COLBRY, et al,

Defendants.

Case No. 10-cv-13856

HONORABLE STEPHEN J. MURPHY, III

ORDER ADOPTING REPORT AND RECOMMENDATION
(docket no. 71), **GRANTING DEFENDANT'S MOTIONS FOR**
SUMMARY JUDGMENT (docket no. 39), **AND DENYING PLAINTIFF'S**
AMENDED MOTION FOR SUMMARY JUDGMENT (docket nos. 49 and 57)

Plaintiff Robert Day filed this pro se civil rights complaint pursuant to 42 U.S.C. §1983 on September 27, 2010. The matter was referred to a magistrate judge for all pretrial proceedings. Defendant Douglas Powell moved for summary judgment on September 7, 2011.¹ Day moved for summary judgment on September 28, 2011, and then filed an amended motion for summary judgment on November 4, 2011. The magistrate judge issued a Report and Recommendation ("Report") on August 23, 2012. The magistrate suggests the Court construe Powell's motion as an unenumerated Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to exhaust administrative remedies and grant the motion; and consequently dismiss Day's motions for summary judgment without prejudice. See *Boyd v. Corrections Corp. of America*, 380 F.3d 989, 994 (6th Cir.2006). Neither Day nor Powell filed an objection to the Report.

Civil Rule 72(b) governs review of a magistrate judge's report and recommendation. De novo review of the magistrate judge's findings is only required if the parties "serve and

¹The remaining defendants have been dismissed by judicial order. See Op. and Order of Partial Summ. Dismissal, ECF No. 5; Order Granting Pl's Mot. to Dismiss Def. Williams, ECF No. 68.

file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2). Nevertheless, because a district judge always retains jurisdiction over a motion after referring it to a magistrate judge, he is entitled to review the magistrate judge's findings of fact and conclusions of law on his own initiative. See *Thomas v. Arn*, 474 U.S. 140, 154 (1985) (clarifying that while a district court judge need not review a report and recommendation “de novo if no objections are filed, it does not preclude further review by the district judge, sua sponte or at the request of a party, under a de novo or any other standard”).

Because neither the plaintiff nor defendant filed objections, de novo review of the Report's conclusions is not required. Having reviewed the Report's analysis, in light of the record, the Court finds that its conclusions are factually based and legally sound. Accordingly, it will adopt the Report's findings, grant the motion for summary judgment, and dismiss this case.

WHEREFORE, it is hereby **ORDERED** that the Report (docket no. 71) is **ADOPTED**.

IT IS FURTHER ORDERED that the Defendant's motion for summary judgment (docket no. 39) is **GRANTED**, and the Plaintiff's motions for summary judgment (dockets no. 49 and 57) are **DENIED**.

IT IS FURTHER ORDERED that this case is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: September 17, 2012

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 17, 2012, by electronic and/or ordinary mail.

Carol Cohron
Case Manager